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OFFICE OF PETITIONS

In re Application of	:	
Atsushi Shimbo	:	LETTER REGARDING
Application No. 10/051,280	:	PATENT TERM ADJUSTMENT
Filed: January 22, 2002	:	
Atty Docket No. 04284.0856	:	

This letter is in response to the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(b)," filed September 9, 2005, notifying the Office of an error in applicant's favor in the initial determination of patent term adjustment. Applicant states that the initial determination of patent term adjustment for this case should be "548" days, not "697" days.

The request for correction of the initial determination of patent term adjustment (PTA) is granted. The determination of PTA at the time of the mailing of the Notice of Allowance is five hundred forty-eight (548) days.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment determination at the time of the mailing of the Notice of Allowance is FIVE HUNDRED FORTY-EIGHT (548) days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On June 16, 2005, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 697 days. Applicant discloses that the Office did not consider applicant's delay of 59 days resulting from filing an amendment in response to the Office action on April 18, 2005.

Applicant is correct. A review of the application history confirms that a period of reduction for applicant delay in replying to the Office action mailed November 18, 2004 should have been entered. Pursuant to § 1.704(b), the record should reflect a reduction of 59 days, counting the number of days beginning on February 18, 2005 to April 18, 2005, for applicant's delay in filing a response to the non-final rejection mailed November 18, 2004.

Moreover, the entry of a period of adjustment of 90 days for Office delay is incorrect. See § 1.703(a)(3). This entry was based on the aforementioned amendment having been filed on November 18, 2004; however, as previously stated, the amendment was filed on April 18, 2005. Thus, the Office did not delay within the meaning of § 1.702(a)(2). The Office mailed the notice of allowance within four months, on June 16, 2005.

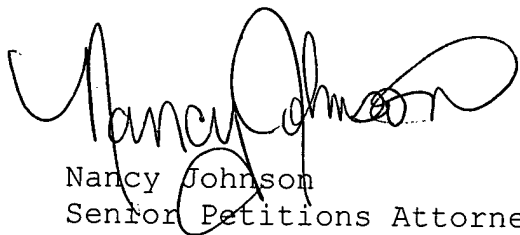
Accordingly, the PAIR record has been corrected to show a total of 607 days of Office delay and 59 days of applicant delay.

In view thereof, the correct determination of PTA at the time of the mailing of the Notice of Allowance is FIVE HUNDRED FORTY-EIGHT (548) days.

As this letter was submitted as an advisement to the Office of an error in Applicant's favor, the Office will not assess the \$200.00 application fee under 37 CFR 1.705(b). The fee submitted is being refunded to Deposit Account No. 06-0916, as authorized. The Office thanks applicants for their good faith and candor in bringing this to the attention of the Office. See Comment 43, *Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term; Final Rule*, 65 Fed. Reg. 54366 (September 18, 2000).

The Office of Patent Publication has been advised of this decision. The application is, thereby, being forwarded to the Office of Patent Publication for issuance of the application.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.

A handwritten signature in black ink, appearing to read "Nancy Johnson". The signature is fluid and cursive, with a large loop at the end.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of adjusted PAIR calculation